IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 511 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
BIMALKUMAR JAYANTILAL DAVE - Opponent(s)

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Appearance :
MR IM PANDYA, APP, for Appellant(s) : 1,
MR DK MODI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 11/12/2007

ORAL JUDGMENT

1. The present Appeal has been filed by the State, under Section 378 (1)(3) Cr. P.C., against the Judgment and order dated 12.2.1999, rendered in Criminal Case No.1646 of 1997 by learned

Judicial Magistrate, First Class, Ahmedabad (Rural) at Mirzapur, Ahmedabad. The said Criminal case was registered against the present respondent (original accused) for the offence punishable under Sections 7(iv) and 16(1)(A)(2) of the Prevention of Food Adulteration Act (for short “PFA Act”). The said Judgment of the trial Court has been challenged by the State on the ground that the Judgment and order passed by the learned Magistrate is against the law and evidence on record.

2. According to the prosecution case the present respondent is the owner of shop, named, “Sainath Stores, Opp. Railway Station, Nr. Sarvajanik School, Sarkhej, Ahmedabad. The complainant Yogeshchandra Madhusudan Soni, Food Inspector, filed the complaint against the present respondent alleging that during the survey it was found that the respondent was selling “Manekchand Gutaka” in his shop, which is nearby the School. As per Notification No.PFA/1097/ 54535/I dated 30.9.1997, the sale of Manekchand Gutaka is prohibited near the School. By selling such prohibited articles like “Manekchand Gutaka” the respondent has committed a breach under the provision of Section 7(iv) of the PFA Act. Sample was seized and it was sent to the Expert at Baroda and then the complainant obtained report from the Public Analyst, Vadodara. Thereafter, complainant obtained

permission to file complaint and after obtaining the permission the complaint has been filed against the present respondent under the provision of PFA Act.

3. On completion of investigation, charge-sheet was filed against the respondent in which he pleaded not guilty. Thereafter the trial was conducted, evidence was recorded and the statement of the respondent – accused, u/s.313 of Cr.P.C., was recorded. At the conclusion of trial and after appreciating oral as well as documentary evidence, the learned Magistrate vide impugned Judgment, acquitted the respondent – accused.

4. The prosecution has examined Shri Yogeshchandra Madhusudan Soni - complainant, at Exh.6, witness Sakrabhai Govindbhai at Exh.17. The said witness Sakrabhai stated on oath that he was present with the complainant – Food Inspector and sample was obtained from the shop of present respondent and the same was seized and thereafter it was sent to the Laboratory.

5. The prosecution has examined Kiranbhai Prahladbhai (Exh.18). He has contended that the shop of the respondent – accused is situated near Khodiyar Temple, Railway Station road. The Food Inspector has purchased Manekchand Gutaka from the shop of the respondent. The contents of Panchnama Ex.13 and the signature was admitted

by the said witness.

6. Mr. Raval, learned Advocate, appearing on behalf of the respondent – accused has contended that the prosecution has failed to establish the distance between the shop of the present respondent and the school. The prosecution has never bothered to produce the evidence to show that whether the shop of the respondent is within the surrounding area of 100 meters from the public school. The panch witness Kiranbhai has also admitted that the distance between the school and the Pan Galla of the respondent is 500 ft. The complainant has also stated in his cross examination that the shop of the present respondent is situated within 100 meters from the public school.

7. I have gone through the evidence of Panch witness Kiran – Ex.18. He has fairly admitted in his cross examination that the distance between the school and the shop of the respondent is 500 ft. Now it is a disputed question whether the shop of the present respondent is situated within the distance of 100 meters from the school or not. I have gone through the observation made by the learned Magistrate. He has discussed the said issue at length and observed that the prosecution has failed to prove that the distance between the shop of the respondent and the school is 100 meters. I have

also gone through the evidence led before the trial Court and also read the papers. It is true that the prosecution has never produced any documentary evidence to show the distance between the school and the shop of the respondent. It also appears that the map is also not prepared and produced on record during the trial. In such type of cases when the prosecution is trying to establish prima facie case then it is the duty of the prosecution to produce evidence to show the distance between the school and the shop of the respondent, which is prescribed in the notification. I have also gone through the Judgment and order passed by the trial Court.

8. In view of above discussion the prosecution has failed to establish its case beyond reasonable doubt and the trial Court has rightly acquitted the respondent – accused and I see no reason to interfere with the findings arrived at by the trial Court.

9. It is settled legal position that in acquittal Appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent – accused

and adopting the said reasons and for the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this Appeal requires to be dismissed.

10. In the result, the Appeal is hereby dismissed. The impugned Judgment and order dated 12.2.1999 passed by the learned J.M.F.C., Ahmedabad (Rural) at Mirzapur, Ahmedabad, in Criminal Case No.1646 of 1997, acquitting the respondent – accused, is hereby confirmed.

(Z.K.SAIYED,J.)

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